IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

OP.No. 2132 of 2002(D)

PETITIONER:

K.U.HAMZA,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3.

BY ADV. SRI.GEORGE C.VARUGHESE

RESPONDENTS:

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1. THE LABOUR COURT,ERNAKULAM.

2. THE CHAIRMAN,COCHIN DOCK LABOUR BOARD,
COCHIN-3.

3. GOVERNMENT OF INDIA,REPRESENTED BY
SECRETARY TO MINISTRY OF SURFACE TRANSPORT,
TRANSPORT BHAVAN,SANSAD MARG,NEW DELHI-110 001

4. P.A.ANIYAN MENON,TALLY/TABLE
SUPERVISOR,COCHIN DOCK LABOUR BOARD,COCHIN-3

5. V.M.JACOB,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3

6. J.STANLY FERNANDEZ,TALLY/TABLE
SUPERVISOR,COCHIN DOCK LABOUR BOARD,COCHIN-3

7. V.BOSE,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3

8. P.P.THOMAS,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3.

9. XAVIER JACOB,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3.

10. E.V.JOSEPH,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3

11. ROBERT RAMALO,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3.

12. E.T.JACOB,TALLY/TABLE SUPERVOSOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3.

13. M.M.KHADER,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3

14. P.DAVID VARGHESE,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3.

15. D.SASIDHARAN NAIR,TALLY/TABLE
SUPERVISOR,COCHIN DOCK LABOUR BOARD,COCHIN-3

16. A.D.RAPHEL,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3.

17. P.N.KRISHNA PILLAI,TALLY/TABLE
SUPERVISOR,COCHIN DOCK LABOUR BOARD,COCHIN-3

18. T.R.NANDALAL,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3

19. V.PETER ASSISSI,TALLY/TABLE
SUPERVISOR,COCHIN DOCK LABOUR BOARD,COCHIN-3

20. V.V.ALEXANDER,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3

21. L.BORNAD NETTO,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3

22. P.J.JOSELIN,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3

23. M.K.SURESH KUMAR,TALLY/TABLE
SUPDERVISOR,COCHIN DOCK LABOUR BOARD,COCHIN-3

24. K.K.PURUSHAN,TALLY/TABLE SUPERVISORS,
COCHIN DOCK LABOUR BOARD,COCHIN-3

25. A.JUSTIN NETTO, TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3

26. T.P.FRANCE,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3

27. P.X.GEORGE,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3

28. K.K.ANTONY,TALLY/TABLE SUPERVISOR,
COCHIN DOCK LABOUR BOARD,COCHIN-3

BY ADV. SRI.K.V.SABU
BY ADV.SRI.K.C.SANTHOSH KUMAR, ADDL.CGSC
BY ADV.SRI.BENNY.P.THOMAS.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (OP NO.2132 OF 2002)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of Memo issued by the Office of R2 dtd.13.1.1999.

Ext.P2: Copy of D.O.Letter of R2 dtd.4.4.90 recommending the payment of the overtime wages.

Ext.P3: Copy of the order dated 17.4.2001 in C.P.No.5/92 (Central) dismissing the claim of the petitioner and respondents 4 to 28.

-True Copy-

P.A.to Judge.

S.SIRI JAGAN, J.

O.P.NO. 2132 OF 2002 D

Dated this the 16th day of March, 2007

J U D G M E N T

The first petitioner in C.P.No.5/92 before the Central Government Labour Court, Ernakulam filed under Section 33C(2) of the Industrial Disputes Act (hereinafter referred to as 'the I.D.Act') is the petitioner herein. Rest of the petitioners in the above claim petition are respondents 4 to 28 herein. Petitioner is challenging Ext.P3 order dated 17th April,2001 passed by the Labour Court in the above claim petition. Petitioner and respondents 4 to 28 are admittedly Tally/Table Supervisors who were working in the erstwhile Cochin Dock Labour Board which has merged with the Cochin Port Trust later. They filed the claim petition claiming overtime wages without ceiling as applicable to Tally/Table Clerks. The contention of the petitioners in the claim petition is that while the Tally/Table Clerks were stagnating in that post for a long period, they raised a dispute for creation of a promotion post and as per the award of the Labour Court,

Madras, the post was created and the petitioners therein were so promoted as Tally/Table supervisors. They would further contend that although they were promoted to the post prescribed as Tally/Table Supervisors, actually they were doing only the work of Tally/Table Clerks and therefore, they were also entitled to overtime wages without ceiling as applicable to Tally/Table Supervisors. Their further contention is that as evident from the communication from the Dock Labour Board to the Secretary of the Government of India (marked as Ext.P1 in the claim petition), it is evident that the first respondent therein was collecting overtime wages also from the Stevedors for whom the work was actually done and therefore there is no justification in not paying to the petitioners therein the amounts so collected for payment of Tally/Table Supervisors also.

2. The second respondent herein contested the claim on two grounds. First is that the petitioners therein are employed in

a supervisory capacity drawing wages exceeding Rs.1600/- per month and therefore they are not workmen as defined under Section 2(s) of the I.D.Act. Further, they contended that the benefit of overtime at double rate without ceiling is applicable to only Tally/Table Clerks and as far as Tally/Table Supervisors are concerned, ceiling has been fixed for paying overtime. In so far as the right for claiming overtime wages without ceiling limit has not been adjudicated upon by the competent authority, there is no existing right on the petitioners therein to claim such overtime wages without ceiling limit and therefore, the claim petition itself is not maintainable under Section 33C(2) of the I.D.Act.

3. After considering the evidence adduced before it, the Labour Court came to the conclusion that going by the various clauses in the appointment order issued to the petitioners therein, it is clear that their duties are of a supervisory nature and they are drawing wages exceeding Rs.1600/-. The Labour

Court also found that in so far as overtime wages without ceiling is applicable only to Tally/Table Clerks, the petitioners have not suceeded in proving that they have an existing right to claim overtime wages without any ceiling limit. On these grounds, the Labour Court found that the petition filed by the petitioners under Section 33C(2) of the I.D.Act is not maintainable and accordingly, dismissed the claim petition by Ext.P3 order. Ext.P3 order is challenged in this original petition.

4. Learned counsel for the petitioner took me through various provisions of the Cochin Dock Workers (Regulation and Employment) Scheme, 1959 which refers to Tally/Table Supervisors also as Dock Workers. He also took pains to take me through the oral evidence in the case in his attempt to prove that Tally/Table Supervisors are also doing the very same work of Tally/Table Clerks which the petitioners themselves were doing

prior to their promotion as Tally/Table Supervisors pursuant to the award of the Labour Court, Madras which according to him was only for the purpose of avoiding stagnation of Tally/Table Clerks and not because of necessity for any supervisors to supervise Tally/Table Clerks. It is also pointed out that there are other people who supervise the work of all these persons and therefore, there was absolutely no necessity for intermediate supervisors named as Tally/Table Supervisors. He therefore submits that the finding of the Labour Court that the petitioners therein are not workmen as defined under Section 2(s) of the I.D.Act is totally perverse and unsustainable. He would further contend that once it is found that the petitioners are actually carrying out the works of the Tally/Table clerks themselves, it goes without saying that they are also entitled to overtime wages without ceiling limit. Accordingly, he would pray that Ext.P3 order may be quashed and the second respondent herein may be

directed to pay to the petitioner herein overtime wages without ceiling limit as applicable to Tally/Table Clerks for the period the petitioner was working as Tally/Table Supervisor and undertook overtime work.

5. In answer to the above contentions, the counsel for the first respondent therein submits before me that a mere reading of Ext.D1 appointment order issued to the petitioners therein would categorically show that their duties are predominantly supervisory in nature and since admittedly the petitioners were drawing wages in excess of Rs.1600/-, there cannot be any doubt that the petitioners are not workmen as defined under Section 2(s) of the I.D.Act. He would also refer to two decisions of the Supreme Court reported in **Burmah Shell Oil Storage and Distribution Company of India Ltd.** v. **The Burmah Shell Management Staff Association and others** (1970 (II) LLJ 590) and **S.K.Maini** v. **M/s.Carona Sahu Co.Ltd**

and others (1994 (II) LLJ 1153) with regard to the circumstances under which a person can be held to be a workman as defined under Section 2(s) of the I.D.Act. The stress was on the fact that although a person is incidentally doing some clerical work, if his principal duties and functions are supervisory in nature he would be taken out of the definition of workman under Section 2(s) of the I.D.Act and that for holding a workman to be a person exercising supervisory functions, it is not necessary that he should be vested with power to appoint or discharge employees under him.

6. I have considered the rival contentions in detail. According to me, it is not necessary to go into this question at all. The management had in fact raised a specific contention that the petitioners therein are not workmen as defined under Section 2 (s) of the I.D.Act in so far as they were exercising functions of a supervisory nature and they are drawing wages in excess of

Rs.1600/-. As is clear from paragraph 13 of the order of the Labour Court, Ext.P3, it is clear that the appointment order Ext.D1 issued to the petitioners therein contained 15 clauses, most of which showed that the duties and functions of Tally/Table Supervisors are supervisory in nature. The contention of the counsel for the petitioner is that despite the existence of some clauses in Ext.D1, which may go to show that some supervisory functions are also attached to the post of Tally/Table Supervisors, the petitioners therein are actually working as Tally/Table Clerks themselves and therefore, they are not essentially exercising supervisory functions at all. The fact that the counsel for the petitioner had to rummage through the evidence and had to strive hard to convince me that they are in fact not exercising any supervisory functions despite the specific clause in Ext.D1 itself would go to show that there is in fact a genuine dispute between the parties as to whether the petitioners fall within the

category of workmen as defined under Section 2(s) of the I.D.Act. The law is so settled to obviate any necessity to cite any decisions or authorities in support of the same to the effect that the jurisdiction of the Labour Court under Section 33C(2) is essentially that of an Execution Court and only an existing right which can be computed in terms of money can be decided by the Labour Court in exercise of its powers under Section 33C(2) of the I.D.Act. It is also settled law that the Labour Court cannot in exercise of its powers under Section 33C(2) of the Act decide a disputed question as to whether a person is a workman or not as defined under Section 2(s) of the I.D.Act. As I have already found in this case, there is, in fact, a very genuine dispute between the parties as to whether the petitioners are workmen as defined under Section 2(s) of the I.D.Act. That being so, the Labour Court could not have gone into that question at all and should have relegated the parties to adjudication of that dispute

itself in an industrial dispute under Section 10 of the I.D.Act. Therefore, I am of the opinion that the Labour Court did not have jurisdiction to consider the claim petition at all. Although for different reasons, I do not find any reason to interfere with Ext.P3 award denying jurisdiction to decide the claim raised by the petitioner in this original petition.

In the above circumstances, the Original Petition is dismissed. No order as to costs.

S.SIRI JAGAN,
Judge

Mbs/

S. SIRI JAGAN, J

O.P. NO.2132 OF 2002 - D

J U D G M E N T

DATED:16-03-2007